

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.1996 OF 1993.

Husainibi Mahamudmiya Shaikh
since deceased through her legal
heirs and representatives :
Mazar Husain Mahamudmiya Shaikh
and Anr. : Petitioners.

versus

Smt.Bhagubai Ganpati Kamate
since deceased by her legal
representative :
Vishnu Subhanrao Sapate : Respondent.

Mr.Sachind Dhakephalkar i/by P.K.Dhakephalkar for
the petitioner.

None for the respondent.

CORAM : D.G.DESHPANDE, J.
DATED : October 18, 2006.

ORAL ORDER

1. Heard learned advocate for the
petitioners. Nobody is present for the
respondent.

2. Original Petitioner is the landlord. He
filed a suit for eviction on the grounds of

bonafide occupation, default and non-user of the premises. His suit came to be dismissed, so also his appeal. Hence this petition.

3. Originally, though the suit was filed against Bhagubai Ganpati Kamate, after her death, respondent was brought on record as her heir. He amended his written statement and, though he adopted the stand taken by the original tenant, he contended that Bhagubai - the original tenant had bequeathed her tenancy right to him and, therefore, he has a right to oppose the claim of the petitioner/landlord. In the rejoinder filed, the petitioner had taken stand that the tenancy right cannot be bequeathed and, therefore, the respondent had no right to contest. However, the courts below gave findings against the petitioner/landlord.

4. The advocate for the petitioners, now relied upon the judgment of this Court reported in 2006(5) Mah.L.J. 522 [Zahid Ahmedali Mazgaonwalla and anr. v/s. Smt.Gulshan Pyarali Mazgaonwalla] wherein after considering all the decisions on the point, this Court came to the conclusion and held that tenancy right cannot be

bequeathed. In para 9 of the said judgment, judgment of the Supreme Court is quoted wherein it is stated that "In our considered view the legislature could not have intended to confer such a right on the testamentary heir. Otherwise, the right of the landlord to recover possession will stand excluded even though the original party (the tenant) with whom the landlord had contracted is dead." This judgment, being a recent one, fully supports the contention of the petitioner/landlord. Therefore, the views taken by both the courts below that the respondent inherited the tenancy right and, therefore, was competent to oppose the claim of the petitioner/landlord, are wrong, pervers and not in conformity with law. Therefore, this petition is required to be allowed. Because after Bhagubai dies, the respondent cannot inherit the rights and, if he has not claimed any other right other than being a tenant by succession, then his defence was not liable to be accepted. Consequently, decree was required to be given in favour of the petitioner/landlord. Therefore for these reasons, I pass the following order :-

:ORDER:

Petition is allowed.

Rule is made absolute as prayed for.

Orders of both the courts below are set aside and the suit of the plaintiff is decreed.

No order as to costs.

[D.G.DESHPANDE, J.]